ATTACHMENT 3

Task Force Response to Comments

G General Draft Policy Issue
I Inclusionary Unit Policy Issue
R Replacement Unit Policy Issue

11-15-06
Topical Issues & Responses

(Includes comments received during oral testimony at the 9/7/06 community meeting as well as comments received via written correspondence)

General Policy Issues

G-1 Mello Act Intent

Issue:

- In public comments, concerns have been raised that the County has failed to address the intent of the Mello Act.
- It was further asserted that the proposed policy does not adequately provide affordable housing for appropriate income levels.
- Members of the public also noted that the draft policy fails to adequately contribute to the creation of affordable units during the time of a great housing shortage.
- Lastly, it was alleged that the draft policy is minimally fulfilling its obligation to provide affordable housing and is maximizing profit to the developer. Specifically, it was alleged that the policy affords a developer an extremely small obligation when he or she utilizes the 5% very low provision coupled with a density bonus, essentially double counting affordable units. *(Also see response to I-1 and I-3).*

Response:

- Intent: The draft policy is in compliance with the requirements of the Mello Act. The draft policy provides for the preservation of existing affordable housing supplies (replacement units) and supports the creation of new affordable housing units (inclusionary units). The County, in its unique position as land owner, must balance the provision of affordable housing with the ability to generate revenue from Marina ground leases which further serves to benefit County public programs.
- Affordable housing for appropriate income levels: The Mello Act allows the County to provide affordable housing to low and moderate income persons and families in the Coastal Zone. The Act applies to "persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code." Section 50093 defines persons or families of low or moderate income as, "persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the department in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937." The County appropriately utilizes the 2006 State income limits published by the California Department of Housing and Community Development.
- New units: The draft policy serves to create new affordable units based upon the inclusionary housing obligations outlined for developers and, as such, will add to the affordable housing stock within the Coastal Zone. Within the unincorporated area as a whole, the County continues to work diligently to address the current housing shortage. Most notably, the County's Density Bonus Ordinance was approved by the Board of Supervisors on August 8, 2006. Additionally, the County has made other housing related accomplishments such as the adoption of the Green Line Transit Oriented District (TOD), completion of the Green Line TOD Infill Estimation Study, commencement of the County's Urban Infill Estimation Project,

implementation of the County's Infill Sites Utilization Program, and formation of the Special Needs Housing Alliance.

- The County asserts that it has followed the guidelines of the Mello Act to preserve and create affordable units in addition to building in elements of flexibility for project review so that developers are well equipped to provide affordable units. *(Also see response to I-1 and I-3)*

G-2 Off-Site locations

Issue:

- Potential for Stigmatization: In public comments, concerns have been raised that the draft policy creates the potential for developers to locate and group together affordable units by allowing developers the choice of whether to provide replacement units (and inclusionary units if proven infeasible on-site) either on-site or elsewhere within the Coastal Zone. It was further alleged that this creates the potential for stigmatization and ghettoization of affordable units and contributes to the gentrification process.
- Off-Site = More Affordable Units: Conversely, other members of the public noted that off-site options may be more desirable in that they have the potential to create a greater number of affordable units than on-site projects. They further asserted that allowing developers to create off-site units can leverage low income tax credits and other financing alternatives that are less likely to be available to projects with a large percentage of market-rate units.
- Off-site Benefits: Lastly, in written testimony, it was noted that off-site projects that are 100% or substantially affordable can be well designed and equipped with amenities that are specific to residents' needs such as day care centers and computer rooms.

Response:

- Stigmatization: Affordable housing developments are not, by definition, low-quality housing. Off-site projects that are 100 percent or substantially affordable can be beautifully designed and can feature amenities tailored to meet resident's needs that may not otherwise be included in a luxury project geared towards affluent professionals or retirees (for example, special amenities for families such as day care facilities or playground facilities).
- Off-site Benefits – a greater number of units: The County believes that by providing this flexibility to developers with ranked preferences for off-site locations, a greater number of affordable units will be made possible than if the County were to solely require units to be replaced and produced on-site.

G-3 Rehabilitation

Issue:

- In public comments, concerns have been raised that the draft policy allows for off-site units to be either new construction or rehabilitation of existing units. It was further argued that the Mello Act does not allow for rehabilitation of existing units as no net new units would be created.
- Members of the public also pointed out that it is far less expensive to subsidize and rehabilitate an existing unit rather than to build a new unit either on or off-site alleging that developers have an economic incentive to rehabilitate existing stock rather than create net new units.

Response

- The main goal of the Mello Act is to preserve, increase, and/or improve the affordable housing stock in the Coastal Zone. Allowing the rehabilitation of an existing unit, and then income-restricting that unit, furthers that goal. Even if the target unit was previously occupied by a low- or moderate-income person, by rehabilitating and income restricting the unit, the unit not only improves in quality, it is guaranteed to be income-restricted for no less than 30 years. The

task force concluded that these improved attributes for the affordable housing unit stock in the Marina are consistent with and further the goals of the Mello Act.

G-4 Duration of affordability

Issue:

- In public comments, concerns have been raised that the Mello Act does not authorize a time limit on affordability and that as leases end, affordable units will disappear.

Response:

- The Mello Act does not require affordability covenants and does not require affordability to be maintained for any set period of time. Nonetheless, the draft policy requires applicants to record a covenant guaranteeing that the relevant affordable income and rent requirements for each replacement and inclusionary unit will be observed for at least 30 years. A 30-year term is commonly applied in the affordable housing context and is consistent with conventional financing practices. Moreover, a 30-year term is what government agencies and organizations commonly use for determining long-term affordability. Finally, the density bonus law also requires income-restricted units to be restricted for 30 years (or longer depending on the requirements of the financing program) for purposes of obtaining a density bonus.

G-5 Allowing rental units in for-sale projects

Issue:

- In public comments, concerns have been raised that developers may choose to build affordable rental units over affordable ownership units and should be required to provide additional affordable units as a result of the reduced cost. It was further argued that the policy allows developers to satisfy their replacement and inclusionary Mello Act obligations by providing rental units, irrespective of whether the new development is comprised of rental units, ownership units or a mix of both. Lastly, members of the public pointed out that because it is cheaper to build and subsidize rental units, there is an incentive to build affordable rentals.

Response:

- Regarding objections raised over the provision in the draft policy that allows an applicant to set aside inclusionary rental units for the low-income component of the project when some or all of the market rate units in the project are being offered for sale, we believe the provision in the draft policy is legally permissible.
- The Mello Act is silent as to the type of unit (for-rent or for-sale) that must be provided under the statute. Moreover, for a particular project, the County may make findings to support allowing affordable for-rent units in a for-sale market rate project. For example, the County may determine that very low income households may have difficulty qualifying for mortgage financing and that preserving rental opportunities for these individuals is preferable. For this reason we believe the provision in the draft policy on this issue is reasonable.

G-6 Location of units within a project – stigmatization

Issue:

- In public comments, concerns have been raised that affordable rental unit tenants will be stigmatized in a building with ownership units.

Response:

- The basis for these concerns regarding the draft policy's provisions that relate to the location of the income-restricted units is unclear.
- The draft policy provides that "the inclusionary units must be reasonably dispersed throughout the rental unit component of the project, and the units sizes and design must be comparable to

the market rate rental units included in the project." Moreover, the draft policy requires the applicant to submit an Affordable Housing Plan prior to obtaining any building permits. The Affordable Housing Plan will allow the Department of Regional Planning to review where the affordable units will be located in the building and insure that they are not improperly segregated or unduly relegated to the least desirable units.

G-7 Monitoring and enforcement

Issue:

- Failure to Complete within Three Years: In public comments, concerns have been raised that the draft policy does not address the penalty fees associated with a failure to complete affordable units within three years.
- Infeasibility Claims: Members of the public further noted that the draft policy does not address how aggressive it will be in challenging infeasibility claims.

Response:

- Failure to complete the affordable units within three years will result in the certificate of occupancy being withheld for the market rate units until the affordable units are complete. Without the certificate of occupancy, the developer will not be able to rent the market rate units. Further, the Department of Regional Planning could issue a notice of violation for failure to comply with the affordable housing covenant, which could result in the levying of an administrative fine and non-compliance fee against the developer, and the possible prosecution of the developer by the District Attorney for committing a misdemeanor. Additionally, the Board could initiate a revocation/modification proceeding to review the developer's coastal development permit, which could result in a significant modification or a complete revocation of the developer's entitlements for failing to comply. Lastly, the County, as lessor, could find the developer in breach of the lease, as compliance with the affordable housing requirements will be a lease obligation.
- With the proposed elimination of the in-lieu fee program, greater emphasis will be placed on the requirement to physically provide affordable housing on-site, within the Coastal Zone or within the extended Coastal Zone. Further, since the County as the landowner can contribute to the feasibility of a project through rent concessions, it is in the interest of the County to question infeasibility claims in order to minimize the need for the County to make concessions. A claim of infeasibility must be supported by substantial evidence in order to withstand legal challenge, and therefore, the County must satisfy itself that a claim of infeasibility meets the legal standard.

G-8 Feasibility – definition & analysis

Issue:

- Application of Feasible Units: In public comments, concerns have been raised that the policy's lack of clarity regarding feasibility allows developers the option to choose fewer units than are actually proven feasible. For example, if 10 units are proven feasible, a developer may choose between 0 and 10 units because the policy does not specify that he or she is required to produce the maximum number of units feasible.
- Threshold level: With respect to feasibility analyses, in public comments it was pointed out that the draft policy does not set a threshold level for return and does not provide a rationale for explaining why this is the minimum level demanded in the market.
- Measurable return: With respect to feasibility analysis, members of the public also pointed out that the draft policy does not specify a calculation for measurable return and further alleged that this lack of specificity allows for the potential for manipulation of feasibility determination.

- Apartment sales adjustment: Lastly, in public comments, it was alleged that although the proposed policy allows for an adjustment of up to 200 basis points from the capitalization rate for apartment sales, the draft policy provides no grounds for selecting a number 0 – 200

Response:

- The Mello Act defines "feasible" in a manner that considers four factors that encompass a broad range of experience. Accordingly, the Mello Act focuses on whether a project can be accomplished successfully in a reasonable period of time, taking into account those factors, not just the economics of a project. Based on this broad, qualitative definition, and because of the uniqueness of projects within the Marina, the task force concluded that it was preferable to provide a basic methodology in the draft policy for determining feasibility, rather than providing a specific formula or threshold.
- The draft policy is not silent on a project's feasibility. It requires the applicant to submit detailed information to the County for purposes of determining a project's feasibility. This information must include:

  1. An evaluation of the impacts created by available incentives (such as density bonuses and available state and local assistance programs);
  2. An estimate of the developer's return that would be generated by the project, which will be compared to a feasibility factor equal to the capitalization rate for apartment sales in Los Angeles County plus up to 200 basis points; and
  3. An evaluation of whether the project can be successfully completed within a reasonable period of time, taking into account economic, environmental, social, and technical factors.

  This approach is consistent with the requirements of the Mello Act.

G-9 In lieu fee

Issue:

- In public comments, concerns have been raised that the draft policy poses no alternative for inclusionary or replacement affordable units.

Response:

- The Mello Act does not require local jurisdictions to grant in-lieu fees for the provision of replacement housing units or inclusionary housing units.
- Pursuant to the Mello Act, in-lieu fees cannot be offered as an alternative to providing replacement housing units and inclusionary housing units. The Mello Act sets parameters for allowing in-lieu fees for replacement housing units, which exempts applicants from the requirements to provide on-site or off-site units, but only when it is infeasible to do so. The Mello Act is silent on in-lieu fees for inclusionary housing units, which suggests that the in-lieu fees would only apply when the provision of inclusionary housing units is infeasible. Although the in-lieu fee traditionally functions as an *alternative* to providing affordable units, in the context of the Mello Act, the parameters set forth suggest that in-lieu fees, if a local jurisdiction chooses to grant them, can only be applied when it is infeasible to provide on-site or off-site affordable units.
- In addition, the in-lieu fee does not guarantee that the replacement or inclusionary housing units will be built at the same time as the market-rate units.
- In the event that the Board of Supervisors chooses to include an in-lieu fee program in the County policy, the County will need to undergo a technical study to determine an appropriate fee that would result in the same number of replacement and inclusionary units, if not more, that the applicant is required to provide pursuant to the Mello Act.

G-10 Stakeholder Input

Issue:

- In public comments, it was suggested that in formulating and finalizing the proposed policy, the County should make a concerted effort to solicit input from a range of key players including: stakeholders, housing developers, affordable housing advocates, non-profit housing developers, and investors. Members of the public noted that advice from the varying sources may provide insider perspectives on relative information such as the mechanics of affordable housing, compliance options, and rates of return, etc.

Response:

- The County has received input from stakeholders, housing developers, affordable housing advocates, and non-profit housing developers via oral testimony at the September 7, 2006 community meeting (60-65 people in attendance) and via written correspondence. The County believes that the input received was comprehensive and representative. It was announced at the community meeting that all interested parties are welcome to continue to submit written correspondence to the County as well as provide testimony at the upcoming Board of Supervisors hearing.

G-11 Community Outreach for the Draft Policy

Issue:

- Notification: In public comments, concerns have been raised that the County did not provide enough notification of the community meeting to the Marina del Rey residents. Members of the public further pointed out, that renters, in particular, did not receive special notice.
- Access to Information: Members of the also noted that the County needs to provide the public with better access to information regarding County resources.
- Outreach / Workshops: Lastly, members of the public asserted that the County has not made efforts to broadly reach out to the community to assess the needs of the residents. Additionally, members of the public noted that the County needs to provide more educational workshops to the community with regard to regional planning issues – including affordable housing. Residents noted that the County needs to, "look out for the little guy."

Response:

- Notification and Access to Information: Prior to the September 7, 2006 community meeting, an announcement was run in the local newspaper, *The Argonaut,* and the draft policy had been made available on the website of the Department of Beaches and Harbors. In addition, meeting notices were mailed to a comprehensive list of individuals and groups that the Department of Beaches and Harbors and Regional Planning identified as having an interest in the Marina del Rey affordable housing policy.
- Outreach / Workshops: The County's Marina del Rey affordable housing task force was established by a Board of Supervisors' motion and based on the timeframe that the Board has given the task force to complete its work, it is not possible to conduct additional outreach efforts and still meet current deadlines.

G-12 Composition of the County's Affordable Housing Task Force

Issue:

- During public comments, a request was made to add a community resident to the affordable housing task force. The concern by opponents of the draft policy is that the residents' views on matters of future growth and affordable housing are not being represented in the drafting of the policy.

Response:

- The task force was established by a Board motion, therefore changes to its composition are within the discretion of the Board.

G-13 Jurisdictional Boundaries: Unincorporated Los Angeles County

Issue:

- During public comments, Marina del Rey residents expressed concern that the County has separate rules for residents of unincorporated Los Angeles County versus residents of the City of Los Angeles and the City of Santa Monica.

Response:

- The City of Santa Monica, the City of Los Angeles, and unincorporated Los Angeles County have differing regulations for their residents because all three areas are separate jurisdictions.
- The Marina del Rey Affordable Housing Policy only applies to housing developments that are proposed in Marina del Rey, which is in the unincorporated area. Unincorporated Los Angeles County is made up of those communities and areas that are outside the jurisdictional boundaries of incorporated cities. As such, they are not serviced by an incorporated city. County government provides basic municipal services for these areas.
- Also see response to I-1.

G-14 Ownership of public land

Issue:

- During public comments, Marina del Rey residents expressed concern as to why the County is promoting the creation of ownership units on public land owned by the County.

Response:

- There are a few units in the Marina within one development which were converted in the past to condominium subleases/long-term residential subleases. These units can be "sold" much like any other condominium, though the County still receives a form of rent and participates in any sales. They are not true ownership units because the subleases cannot extend past the term of the Master Lease.

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Replacement Unit Issues

R-1 Exemptions

Issue:

- In public comments, concerns have been raised that the Mello Act does not authorize the exemptions of units occupied by:
  1. resident managers and sublessees,
  2. units occupied by students whose parents claim them as dependents, or whose parents guarantee the rent, even if the student pays the rent themselves,
  3. units vacant at the time the "term sheet" negotiations commence.

Response:

- 1. Resident managers and sublessees: In determining an applicant's replacement unit obligation, the draft policy excludes from consideration those units occupied by sub-tenants not named on the lease, and those units occupied by resident managers. In public comments, objections were raised that these exclusions are improper, but we believe they are legally permissible.
- The Mello Act does not address this specific issue and provides no guidance as to how to survey the existing units in a building to determine if they are occupied by persons or families of low or moderate income. The task force concluded that, regarding sub-tenants, for purposes of conducting the survey and as a matter of fairness, it was appropriate to include for consideration only those occupants named on the original lease between the landlord and the original tenant(s), and family members/domestic partners of those original tenants. The landlord has a contractual relationship only with persons named on the lease, and could most efficiently conduct the tenant survey only as to those persons. Moreover, it is entirely possible that the landlord may have no knowledge of sub-tenants living in the unit nor approve of such occupancy, and therefore should not be required to provide an income-restricted unit based on the income level of those sub-tenants.
- As for resident managers, they are generally not considered "tenants" in the landlord/tenant context, but instead, they are classified as employees. Hence, the task force concluded that it was appropriate to exclude from consideration the resident manager units because the focus of the Mello Act is replacing units for low or moderate income occupants that are tenants, not employees.
- 2. Student exemption:
  The task force concluded that it was reasonable not to solely consider the student's income for purposes of determining replacement unit eligibility. Students who are financially dependent on their parents but are seeking higher education are not generally reflective of the low or moderate-income individual that the Mello Act is intended to protect. Many, if not most, of these students will have substantially greater earning capacity when they complete school so the task force found that considering their income alone while in school would not be warranted. Instead, the task force decided that it was appropriate to aggregate the student's income with his/her parents' income to determine replacement unit eligibility.
- 3. Vacant units: Vacant units would not be required to be replaced under the Mello Act as there is no low or moderate income person or family residing in the unit. A safeguard against abuse exists in the Mello Act, which requires an affordable replacement unit for each vacancy resulting from an eviction from that dwelling unit within one year prior to the filing of an application to convert or demolish the unit and if the eviction was for the purpose of avoiding statutory requirements.

R-2 Determining household income / Comparison of actual monthly rent w/affordable monthly rental rate

Issue:

- In public comments, it was pointed out that the draft policy allows the County to compare actual monthly rent with an affordable monthly rental rate if a tenant fails to provide income information. Challengers of the policy alleged that this is not permissible under the Mello Act as the Act requires examination of tenant incomes, not rental rates.

Response:

- The Mello Act does not provide specificity regarding assessing replacement unit obligations when tenants fail to provide income information. Without income survey information provided by a tenant, and in the absence of tenant income information from applicant files (no more than two years old), the County believes it is performing its due diligence and making a best faith effort to assess replacement unit obligations by analyzing the previous year's monthly rent compared to the average affordable monthly rental rates for the same year.

R-3 Determining household income / household size

Issue

- In public comments, concerns have been raised that the draft policy makes conclusions regarding the incomes of tenants living in units based upon monthly rental rates without giving consideration to number of tenants living in a unit. Members of the public noted that this is problematic, as tenants may be "doubled-up" or overcrowded in a unit to afford the monthly rental rate.

Response:

- When tenants fail to provide the County with information requested by the income survey, the County then seeks information from tenant application files, and if income information is not found in applicant files, *only then* does the County make an affordable unit obligation determination based on an analysis of monthly rental rates. Information from applicant files, if found, may or may not include a current listing of the number of residents and their relationships to each other within an apartment.
- In an effort to consider the number of residents within an apartment, the County has designed the income survey with provisions to respond to the Mello Act's intent to provide affordable housing for all residents in need. The Act states, "In the event that an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding any dependents thereof, is of low or moderate income."
- The County's income survey specifically requests that tenants disclose information regarding the names of all persons living in the apartment unit as well as their relationships.

R-4 Roommate independence – Policy is not specific enough

Issue

- In public comments, it was pointed out that the draft policy requires roommates to be unrelated and financially independent of each other in order for their incomes to be assessed separately. It was alleged that this provision is overly broad and doesn't address the following set of situations:
    1. Related individuals: siblings who are financially independent of each other
    2. Unrelated individuals who share a bank account or own real property together
    3. Domestic Partners

4. Individuals requiring live-in caregivers who may be disqualified based on the income of their caregiver.

Response:

- Related individuals/Unrelated roommates: The task force concluded that it was appropriate to aggregate the incomes of unmarried but related roommates because related individuals sharing the same household often share a number of financial obligations, including the rent. Moreover, the task force also found that if unrelated roommates shared financial assets such as real property or a bank account, it was appropriate to aggregate their incomes for the same reason, which is that they often will share financial responsibilities such as the rent.
- The task force's goal was to establish clear guidance for conducting the tenant surveys to ensure that they would be conducted efficiently and accurately. While there are a number of interpersonal relationships that might indicate shared financial responsibilities, the task force concluded that, aside from the typical marital relationship, the most easily verifiable relationships are student/parent and domestic partner relationships. The draft policy thus evaluates the verifiable indicia of these relationships to determine whether the aggregation of income is appropriate for replacement housing purposes.

R-5 Replacement bedrooms (Like for Like-bedrooms)

Issue

- In public comments, objections were raised that it is improper for the draft policy to provide for the replacement of bedrooms rather than whole units where one occupant is determined to be of low or moderate income.

Response:

- The Mello Act provides that if "an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding any dependents thereof, is of low or moderate income." However, the Mello Act does not establish a formula for calculating how the requirements apply to portions of units. To ensure that replacement obligations for portions of units are met, the draft policy looks at the number of qualifying occupants in relation to the number of bedrooms, to determine whether any person or family in that unit qualifies as a low or moderate income person or family. Thus, if two unrelated persons occupy a two-bedroom unit and one occupant is a person of low or moderate income and the other person is not, the draft policy requires that a one-bedroom unit be replaced rather than a two-bedroom unit. We believe that this is a reasonable interpretation of the Mello Act.

R-6 Like-for-like replacement units by income level

Issue

- In public comments, objections were raised that the draft policy would allow low income units to be replaced with moderate income units rather than like-for-like replacement.

Response:

- The Mello Act states that units occupied by low or moderate income persons or families may not be converted or demolished "unless provision has been made for the replacement of those dwelling units with units for persons or families of low or moderate income." The Mello Act does not expressly require that provision must be made for the replacement of those dwelling units with units for persons and families *of the same income level as the units being converted or demolished.*
- The replacement unit requirement of the Mello Act is not intended to provide replacement housing for the existing occupants upon whom the determination is based, but rather, to

preserve the existing affordable housing stock. Also, by basing the replacement requirement on income levels of the occupants rather than the rent level charged, the replacement requirement of the Mello Act has the potential to create income-restricted units out of market rate units that happen to be occupied by persons of low or moderate income.

- Taking these factors into consideration, the draft policy provides that replacement units be set aside as very low, low, or moderate income rental units based upon comparison of the monthly rent at the commencement of term sheet negotiations for the project to the affordable housing rental rates published annually by the Community Development Commission ("CDC"). Thus, market rate units that require replacement because they are occupied by persons or families of low or moderate income would be designated for replacement as moderate income rental units, and units where the rent matched the moderate, low, or very low income rental housing rates of the CDC, would be designated as moderate, low, or very low income rental units, respectively. We believe this is a reasonable interpretation of the Mello Act, as it fulfills the requirement that units occupied by persons or families of low or moderate income be replaced with income-restricted units.

R-7 Sensitivity regarding income information

Issue

- In public comments, residents expressed concern over the release of confidential income information on the income survey. Their concern focused on the potential for the income information to be misused on the part of the lessee against tenants.

Response:

- The Los Angeles County Community Development Commission (CDC) will collect tenant income information and maintain it in the strictest confidence. The draft policy states, "An income survey to be completed by each family and individual occupant to determine the applicant's replacement housing obligation for Mello Act Compliance...will be used exclusively to determine replacement housing eligibility."
- The "Coastal Housing Program Tenant Questionnaire" states, "All financial information that you provide will remain confidential."

R-8 Income survey assumptions regarding standards of living

Issue

- In public comments, concerns have been raised that in assessing eligibility for affordable units, the draft policy lacks specified standards for making the determination for qualification. Concerns were raised that predetermined government criteria for how people should be using their money will be applied.

Response:

- In determining eligibility for replacement units, the County relies upon the State's definition of persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code." 50093 defines persons or families of low or moderate income as, "persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the department in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937." In addition, the County utilizes the 2006 State income limits published by the California Department of Housing and Community Development.

R-9 Displacement – The County has not made efforts to accommodate displaced residents

Issue

- In public comments, concerns have been raised that the draft policy has not addressed how to accommodate residents that are displaced from the Marina del Rey area when they can longer afford to live in the area.

Response:

- The County is not bound by law to offer relocation assistance for the development/redevelopment of the Marina by private lessees.

Inclusionary Unit Issues

I-1 The policy's percentages (5% very low, 10% low) are too low

Issue

- In public comments, concerns have been raised that the current draft policy reduces the number of affordable units than are currently allowed by 50%.
- Members of the public further noted that the City of Los Angeles has offered greater percentages.
- Members of the public also purported that the County should require all apartment complexes to have affordable units, whether the buildings are new or not.

Response

- The draft policy requires that each residential project set aside a percentage of the new units as affordable units, subject to an analysis of feasibility on a case-by-case basis. The draft policy recommends a County goal of either five (5) percent very low income units or ten (10) percent low income units. The County could require a higher or lower percentage of inclusionary units based on the feasibility analysis. In public comments, objections have been raised that the draft policy reduces the total number of units to which the inclusionary calculation applies, since the current Marina affordable housing policy requires 10 percent low income units, and the draft policy requires only 5 percent very low income units.
- The Mello Act does not set forth any percentages, minimum number of units, or other formulas for complying with the inclusionary requirement. The Mello Act provides that: "New housing developments constructed within the Coastal Zone shall, where feasible, provide housing units for persons and families of low or moderate income, as defined in section 50093 of the Health and Safety Code." Likewise, the Mello Act does not dictate that the required housing be set aside for a particular income category or all income categories include in the definition of "low or moderate income" under the Health and Safety Code (those categories are very low, low, and moderate income).
- The draft policy has not eliminated the goal of 10 percent low income units, rather it adds an alternative goal of 5 percent very low income units. The addition of the proposed goals of 5 percent very low income units provides consistency with the State's current density bonus provisions which require that mandatory development benefits and concessions be provided to any developer who is willing to set aside 5 percent of the project's units for very low income persons.
- In a legal opinion prepared by the State Department of Housing and Community Development ("HCD") for implementation of the Mello Act, HCD advises that local governments may either conduct a feasibility analysis o a case-by-case basis for individual projects or conduct a

comprehensive study to establish set inclusionary housing requirements in advance. Given the small number of residential projects anticipated in the Marina in the near future, and the cost and consumption of time of conducting a full feasibility analysis prior to adoption of the draft policy, the task force is recommending a feasibility analysis for each project, coupled with goals that provide developers with some indication of the County's objectives. We believe this is legally defensible and consistent with the Mello Act's provisions regarding feasibility.

- In public comments, objections were raised that the affordable housing policy for the Marina should mirror that of the City of Los Angeles, which requires 10 percent very low income inclusionary units or 20 percent low income inclusionary units. The City of Los Angeles' policy, however, is an interim policy adopted pursuant to a settlement agreement entered into by and between the City and the Housing Advocates. The City has recently completed a comprehensive feasibility analysis for implementation of its permanent coastal affordable housing ordinance. The City's draft ordinance, which will cover Pacific Palisades, the Venice-Playa del Rey area, and the San Pedro-Harbor area, proposes a set requirement of 10 percent very low income inclusionary units or the payment of in-lieu fees specific to each coastal community. The City's coastal communities generally consist of lower-density neighborhoods that are inherently different than higher-density Marina del Rey.

I-2 Method of calculating inclusionary obligation - subtraction

Issue:

- In public comments, concerns have been raised that the draft policy affords a developer the ability to calculate his or her inclusionary obligation by subtracting the number of existing units from the number of new units and that this is not supported by the Mello Act.

Response:

- The draft policy requires the percentage of affordable inclusionary units to be calculated based on the net incremental new units to be constructed or converted on the project site. The draft policy separately requires the replacement of existing units occupied by persons or families of low or moderate income that are converted or demolished. In public comments, concerns were raised that the draft policy is flawed because the calculation of inclusionary units subtracts out the existing units;.
- The Mello Act does not set forth any formula for complying with the inclusionary requirement. We believe the draft policy is consistent with the Mello Act, which creates separate obligations for units that are converted or demolished and for units that are new housing. Establishment of a base for calculating the number of inclusionary units is a matter of policy. The County's existing policy requires that 10 percent of all the units constructed /reconstructed on-site be income-restricted. The City of Los Angeles' interim policy provides that the percentage inclusionary requirements are based on the total number of new-reconstructed units less any required replacement units. We believe that a base that consists of all units constructed, all units less the number of replacement units, or the net incremental new units only, are all legally defensible, so long as inclusionary units are provided where feasible.

I-3 Density bonus

Issue:

- In public comments, it was pointed out that the proposed policy allows a developer to calculate his or her inclusionary obligation based upon the pre-density bonus number of units in a development and it was alleged that this is impermissible under the Mello Act.
- Conversely, other members of the public noted that the proposed policy permits developers to take advantage of the full menu of incentives required under state law.

Response:

- The County believes that the proposed policy as drafted to include the pre-density bonus calculation of Mello units best responds to providing incentives that improve feasibility and the ultimate generation of new affordable units.
- The Mello Act permits the application of density bonuses and allows the County the flexibility in enabling the inclusionary unit calculation based on pre-density bonus numbers. In subsection (d) relating to inclusionary units, the Mello Act states, "In order to assist in providing new housing units, each local government shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing or required applications, and the waiver of appropriate fees."

I-4 Rent concessions

Issue:

- In public comments, it was pointed out that rent concessions only relate to inclusionary units and not replacement units

Response:

- The County may offer rent concessions as one item in menu of incentives designed to improve feasibility for developers in providing affordable units. This would provide for a true regulatory incentive that positively affects a project's feasibility. In subsection (d) relating to inclusionary units, the Mello Act states, "In order to assist in providing new housing units, each local government shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing or required applications, and the waiver of appropriate fees."
- With regard to replacement units, the Mello Act does not address the provision of additional incentives. Therefore, the County has the discretion to not offer rent concessions for replacement units which sends the strong message to developers that they are responsible for providing required replacement units on their own, or with other forms of available assistance.

I-5 Required vs. setting a goal

Issue:

- In public comments, concerns have been raised that the draft policy is too flexible in that it does not require that affordable units be included in new developments and merely sets as a "goal" for the inclusion of 5% very low or 10% low income units.

Response:

- The Mello Act requires that new housing developments within the Coastal Zone shall, where feasible, provide housing units for persons and families of low or moderate income. If it is not feasible to provide these units on-site, the Mello Act requires that the developer provide affordable units within the Coastal Zone or within the extended Coastal Zone, if feasible to do so. The Mello Act does not require local governments to set a percentage requirement. In a legal opinion prepared by the State Department of Housing and Community Development ("HCD") for implementation of the Mello Act, HCD advises that local governments may either conduct a feasibility analysis on a case-by-case basis for individual projects or conduct a comprehensive study to establish set inclusionary housing requirements in advance. Given the small number of residential projects anticipated in the Marina in the near future, and the cost and consumption of time of conducting a full feasibility analysis prior to adoption of the draft policy, the task force has recommended a feasibility analysis for each project, coupled with goals that provide developers with some indication of the County's objectives. We believe this is legally defensible and consistent with the Mello Act's provisions regarding feasibility.

I-6 Rent adjustments – The policy contains no detail regarding case-by-case adjustments

Issue:

- In public comments, it was noted that under the proposed policy, rent adjustments for inclusionary units are subject to negotiation on a case-by-case basis with the County. Members of the public alleged that the policy lacks specificity regarding such adjustments.

Response:

- In considering rent adjustments (concessions) on a case-by-case basis, the County takes into account its own resources, funding requirements and community needs. Only after balancing its own needs, may the County consider the various project specific elements of each case and evaluate the prospect of providing rent adjustments. Because the County is constantly assessing its financial position and services provided to the community, the County must consider projects on a case by case basis and make decisions with respect to rent concessions accordingly. As such, it is not appropriate to provide further specificity regarding rent adjustments in the draft policy.

I-7 The draft policy does not call for a specific cap on the ground lease reduction

Issue:

- In public comments, concerns have been raised that the proposed policy states that the County is willing to reduce their ground lease on inclusionary units, though does not provide specificity regarding a percentage or maximum. It was further asserted that if there is no maximum level provided, then a feasibility analysis cannot be established.

Response:

- The ground lease reduction cannot be specified because it is contingent upon the availability of funds. The revenue from County leases can vary, and are either allocated for specific government purposes, or placed into the County General fund.
- According to the Mello Act, the County is required to "offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing of required applications, and the waiver of appropriate fees" in order to assist in the provision of inclusionary housing units. Because of the unique circumstances in which the County is the landowner, "other incentives," could include ground lease reductions, if and when feasible for the County.
- The extent to which the provision of inclusionary housing units is feasible can initially be determined independent of the maximum percentage of ground lease reductions or any additional incentives and concessions that the County is able to provide. The applicant could also factor in the provision of density bonuses and any source of funding or financing for affordable housing that the applicant seeks to determine feasibility. In the event that the provision of inclusionary housing units is determined to be infeasible on-site, or off-site within the Coastal Zone or within three miles thereof, the County will work with the applicant on a case-by-case basis to consider additional incentives and concessions, including ground lease reductions, to assist in contributing to the feasibility of providing inclusionary housing units.